No. 93-558

(3)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

RELIGIOUS TECHNOLOGY CENTER, CHURCH OF SCIENTOLOGY INTERNATIONAL, and CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Petitioners,

—v.—

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA,

Respondent,

DAVID MAYO, ADVANCED ABILITY CENTER, ROBIN SCOTT, ADRIENNE SCOTT, RON LAWLEY, MORAG BELLMAINE, STEVEN BISBEY, ADVANCED ABILITY CENTER CANDACRAIG, ADVANCED ABILITY CENTER EAST GRINSTEAD, CHURCH OF THE NEW CIVILIZATION, HARVEY HABER, JOHN NELSON, JON ZEGEL, VIVIAN ZEGEL,

Real Parties In Interest.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONERS' REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PETITIONERS' REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents' opposition studiously avoids the central issue raised by the petition: whether the continued and ongoing failure of the district court to exercise meaningful oversight and review of the actions of the special master on the critical and outcome determinative aspects of this case violates Article III of the Constitution. Respondents devote just over one page of their twenty-three page opposition to it (Opp. at 22-23), and their analysis is conclusory and empty. Instead respondents direct their primary attention to the propriety of the original referral (Opp. at 19-24), a question not directly raised by this petition,[1] and to the question of whether the district court's abdication of its constitutional responsibility is correctable by mandamus. On the latter question, respondents concede that the key consideration should be whether the district court's actions are "clearly erroneous as a matter of law" (Opp. at 14). By failing to address meaningfully the petitioners' central argument as to *why* the district court's actions are clearly erroneous as a matter of law, respondents have provided no cogent opposition to the petition.[2]

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[1] Petitioners, of course, objected to the original referral and unsuccessfully sought mandamus on that question in 1990. The *present* petition, however, while not conceding the propriety of the original referral, is directed at the *practice* of the district court in ceding its Article III responsibilities to the special master on an ongoing, *de facto* basis.

[2] Respondents' efforts to portray the prior history and delays in this case as due to abusive tactics by petitioners is absurd. The case was delayed in its earlier stages because of a lengthy vendetta engineered by respondents against the first District Judge to sit on the case, Hon. Mariana Pfaelzer, after Judge Pfaelzer stated on the record that she found respondent Mayo incredible as a witness on the key issues in this case. (See Petition at 4-5). Respondents made two motions to recuse Judge Pfaelzer from the case. On March 14, 1988, District Judge Harry L. Hupp denied the first motion as "mind boggling" and "ludicrous." The respondents immediately sought a writ of mandamus, which was denied. On April 11, 1989, Judge Hupp denied the second motion, finding it to have "no merit" and stating, in part, that respondents'

I. The Ninth Circuit Failed to Provide Mandamus Review to Correct an Abdication of the Judicial Role

The petition focuses upon the traditional and core function of mandamus as elucidated by this Court: "to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche* v. *Evaporated Milk Assn.*, 319 U.S. 21, 26 (1943); *See De Beers Consol. Mines, Ltd.* v. *United States*, 325 U.S. 212, 217 (1945); *Ex Parte Perre*, 318 U.S. 578 (1943). The Ninth Circuit tests for granting or denying mandamus, as elucidated in *Bauman* v. *United States District Court*, 557 F.2d 650 (9th Cir. 1977), and as applied in this case, not only fail to acknowledge the core function of mandamus, but undermine its use. Certiorari is sought, in part, to preserve the traditional function of mandamus jurisdiction, to compel a district court to exercise its Article III powers. As we show, numerous other circuits have upheld the use of mandamus precisely to correct a district court's abdication of its Article III role to a special master. *In re Bituminous Coal Operators' Association*, 949 F.2d 1165, 1168 (D.C.Cir. 1991); *In re United States*, 816 F.2d 1083, 1085 (6th Cir. 1987); *Pruden-*

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lurid allegations against the Judge were "unsubstantiated," "preposterous," and the "product of the paranoia (meant non-medically) which affects counsel when the litigation gets out of hand." Following these total rejections of respondents' abusive campaign against her, Judge Pfaelzer did remove herself from the case and transferred it to Judge Ideman, who then proceeded to abdicate his responsibilities to the special master, as set forth in the Petition.

While it is true that petitioners did seek to recuse Judge Ideman, their motion was based upon the acknowledged fact that a framed cover of the May 6, 1991 edition of *Time* magazine, which characterized the Scientology religion as a "Cult of Greed," hung on the wall in his chambers. Petitioners' recusal motion was not rejected out of hand in the same manner as respondents' earlier motions to recuse Judge Pfaelzer. Indeed, the Ninth Circuit acknowledged that "reasonable minds might draw different inferences from the facts alleged in the motion for recusal," but refused to intervene by mandamus because "the harm alleged in the petition is correctable on appeal . . ." Ex. VV. This Court denied certiorari. ____ U.S. ____, 112 S.Ct. 2273 (1992)

tial Ins. Co. v. *United States Gypsum Co.*, 991 F.2d 1080, 1083 (3rd Cir. 1993).

Respondents ignore the petition's argument that the Ninth Circuit's rule and decision here fails to provide for mandamus review in contexts which lie at the traditional core of mandamus jurisdiction. Respondents engage in an analysis of the five factors identified by the Ninth Circuit in *Bauman*, none of which involves a district court's abdication of its judicial role, thereby demonstrating the inadequacy or inapplicability of the *Bauman* standards to a traditional mandamus case such as this.

Respondents argue that, under *Bauman*, mandamus would have been appropriate and allowed in this case if the district court's actions were clearly erroneous as a matter of law. Opp. at 9, 14. This is highly unlikely, given the other *Bauman* criteria, which improperly preclude mandamus in a case such as this involving abdication of judicial powers, and given that the district court's abdication of its judicial role here was clearly erroneous, under applicable law of numerous circuits, *including* the Ninth Circuit. Indeed, to the extent that the Ninth Circuit panel found that the district court's actions here were not clearly erroneous, its decision was in conflict with recent circuit court decisions both within and without the Ninth Circuit, as shown in the Petition.

II. Respondents Fail to Dispute the District Court's Record of Consistently "Rubber Stamping" and Giving Dispositive Effect to the Actions of the Special Master

Respondents primary focus on the original *order of reference* to the special master is intentionally misplaced. In the petition, petitioners endeavored to demonstrate carefully the ways in which the district court has abdicated its Article III responsibilities to adjudicate the central issues of this lawsuit by failing to meaningfully review the special master's actions

and by treating them as if they were final orders. In particular, the district court has:

(1) Rotely and without analysis rubber stamped every order of the special master on motions to dismiss, motions for partial summary judgment, discovery motions, motions for discovery sanctions including imposition of issues and dismissal sanctions, and motions for attorneys fees. In so doing, the district court has never heard or even met with counsel, and has not written a single word of substantive analysis of the legal or factual issues involved.

(2) Permitted and approved the actions of the special master in giving final and preclusive effect to his own earlier orders, even though the district court failed to review those earlier orders *at all*. Thus, the special master was permitted to impose an ever escalating array of sanctions orders based upon earlier discovery and sanctions orders over which the district court failed to exercise review. The district court then rubber stamped the ultimate sanctions of dismissal and attorneys fees, and dismissed as moot the petitioners' earlier appeals from the earlier discovery and sanctions orders upon which the latter, more severe sanctions were based.

A growing body of case law has recognized that Article III prohibits a district court from merely "rubber stamping" the recommendations or determinations of a special master, particularly on questions central to and outcome determinative of a litigation. *Burlington Northern Railroad Co.* v. *Department of Revenue*, 934 F.2d 1064 (9th Cir. 1991); *Stauble* v. *Warrob, Inc.*, 977 F.2d 690 (1st Cir. 1992); *In re Bituminous Coal Operators' Assn., Inc.*, 949 F.2d 1165 (D.C. Cir. 1991) (Ginsburg, J.); *In re United States*, 816 F.2d 1083 (6th Cir. 1987). *See also Prudential Insurance Company* v. *United States Gypsum Company*, 991 F.2d 1080 (3rd Cir. 1993). These cases recognize that where there has been a reference to a special master, the district court must "reserve for [it]self, and not delegate to the special master, the core function of making

dispositive rulings, including findings of fact and conclusions on issues of liability." *In re Bituminous Coal Operators' Association, Inc.*, 949 F.2d at 1166.

Respondents' attempts to distinguish or avoid the impact of these cases is unavailing. The fact that the references in *Burlington Northern*, *Stauble*, and *Bituminous Coal* included *possible* trial (only *Stauble* went to trial) was not essential to the holdings in any of those cases. Each court emphasized that Article III required the district court to exercise independent judgment on the important and determinative questions of the case; none restricted its holding to review after *trial*, as opposed to summary judgment or other critical motions. *See, e.g., Bituminous Coal*, 949 F.2d at 1169 ("In sum, it is the function of the district judge . . . to decide dispositive issues of fact and law. . . . On remand, the district judge shall . . . retain for himself full authority and responsibility to try the case, to determine liability, and to decide *de novo*, without deferring to a special master, all potentially dispositive questions of fact or law"); *Burlington Northern*, 934 F.2d at 1068 (court reversed denial of preliminary injunction, decided on papers *prior* to trial); *Stauble* v,. *Warrob*, 977 F.2d at 695 and n.6 (district court must decide *de novo* "fundamental determinations of liability", disapproving "the determination of dispositive pretrial motions by the master"). See also *Prudential Insurance Company*, 991 F.2d at 1084, 1086 (Noting that "in this very case the matters consigned by the district court to the master involve proceedings having to do with motions to dismiss, motions to strike defenses, summary judgment motions, and discovery. . . .", and holding that "[a] district court has no discretion to delegate its adjudicatory responsibility in favor of a decision maker who has not been appointed by the President and confirmed by the Senate").

Respondents argue that because "the briefing and record before the district court on the motion for review have been extensive . . . the district court did not have to reinvent the

wheel" in denying petitioners' motions to review the special master's recommendations. Opp. at 22. The contention that briefing can justify the district court in summarily, and without analysis, affirming each and every recommendation of the special master was explicitly rejected by the Ninth Circuit in an earlier case:

> The district court acted as a "mere rubber stamp" for the findings and conclusions of the master. Although the court received memoranda from the parties, in its order it provided no substantive explanation for affirming.

Burlington Northern, 934 F.2d at 1074.

Respondents also complain that petitioners' motions for review to the district court "merely re-argued what was said below in proceedings before the Special Master" (Opp. at 22). Of course they did; it would have been improper for petitioners to make new and different arguments to the district court than they had made to the special master. As the cases, cited above, make clear, it was the duty of the district court to review those arguments independently and *de novo*; the "mere 'laying on of hands' by a district judge who adopts a magistrate's or master's recommendation of liability *pro forma* cannot inoculate a proceeding against the pathology that invariably follows from noncompliance with Article III." *Stauble* v. *Warrob*, 977 F.2d at 696.

It is important to note that respondents totally ignore the fact that the district court's abdication of its responsibilities here went beyond merely "rubber stamping" the special master's recommendations, without hearings or legal or factual analysis. Equally "an inexcusable abdication of judicial responsibility," *Burlington Northern*, 934 F.2d at 1072, was the district court's failure to review *at all* certain critical "recommendations" of the special master. As we have shown (Petition at 7-10, 22-23), the special master then bootstrapped upon these earlier, unreviewed recommendations his ultimate sanctions of dismissal and imposition of attorneys fees. The

district court then rubber stamped the latter orders, and dismissed as moot the petitioners' prior and still pending motions to review the earlier orders, *upon which the latter dispositive orders were based*. The special master, thus, was permitted to give final and conclusive effect to his earlier, unreviewed orders.

Respondents suggest that it was permissible for the district court to defer to the special master because the latter "is a retired [California] state court judge with twenty years experience on the bench . . ." (Op. at 22). That is not the point. The special master was not appointed by the President and confirmed by the Senate. He does not have life tenure. He is not a federal Article III judge, whatever may be his experience or lack of experience on the state courts. There is no basis to assume that the special master in this case was any more qualified, erudite or independent than the special masters in cases such as *Burlington Northern*, *Stauble*, *Bituminous Coal*, *In re United States*, or *Prudential Insurance*.[3] Whatever the background of the special master, he cannot be permitted to replace the federal judge in adjudicating the merits of the case.

Finally, respondents' attempt to obfuscate and obscure the degree to which the district court merely rubber stamped the special master's orders. They state that "the reasons for the decisions were clearly discernable, . . . the orders were [not] too oblique," and "petitioners knew exactly what the district court meant" (Opp. at 23). It is true that petitioners knew

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[3] It perhaps is worth noting that, as a retired state court judge, the special master would have gained little familiarity with the federal claims at the core of the case, including RICO, antitrust, and federal copyright and trademark claims. The special master, thus, was less familiar with or expert on the subject matter of the lawsuit than the special masters in several of the cases cited above, who were specialists on the questions which arose in those cases. See *Burlington Northern*, 934 F.2d at 1069; *Prudential Insurance*, 991 F.2d at 1086-87. *Cf.*, *Stauble* v. *Warrob*, 977 F.2d at 692, n. 2 (special master was retired chief judge of the Massachusetts Superior Court).

what the district court meant; it meant, "You lose." Other than that, the district court *never* provided the slightest explanation or analysis as to why petitioners lost.[4]

Given the district court's extraordinary abdication of its Article III responsibilities, the clearly erroneous nature of its actions, and the traditional availability of mandamus to correct such abuses, petitioners should not be required to undergo the extraordinary burden and expense of litigating this case before the special master to the bitter end, only to await appeal from a final judgment to vindicate their right to an Article III forum. Mandamus has always been available in circumstances such as this, "to compel [the district court] to exercise its authority when it is its duty to do so." *Roche* v. *Evaporated Milk Assn.*, 319 U.S. at 26. Certiorari should be granted to insure that mandamus is available to correct judicial abdication of Article III powers, and to elucidate the standards governing use of special masters so as to render such mandamus review unnecessary in most cases.

[4] Respondents make reference to the order signed by the district court awarding them attorneys fees (Opp. at 6), in an attempt to suggest that on that occasion, at least, the district court wrote an opinion and analyzed the issues. Respondents ignore the fact that the order signed by the district court was prepared *in its entirety* by Mayo's counsel. See 32a. The only "independent" action taken by the district court was to strike the work "Proposed" from the order submitted by Mayo's counsel (28a), and (literally) to rubber stamp a facsimile of the district judge's signature to the order.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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